

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JIAHUANG ZHANG,

Plaintiff,

v.

MADELYN BUSHNELL,

Defendant.

No. C04-2220Z

ORDER

The Court GRANTS Defendant's Motion to Dismiss or For Summary Judgment, docket no. 4. The Plaintiff has not responded to Defendant's motion. A failure to file papers in opposition to a motion may be considered by the Court as an admission that the motion has merit. CR 7(b)(5).

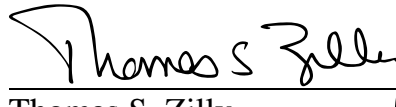
It also appears that this Court lacks subject matter jurisdiction to the extent that this claim can be construed as a claim under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2401(b), 1346(b), and 2671, *et seq.* The United States has substituted itself as the sole party defendant in this action in connection with any claims under the FTCA. Docket no. 4. The Plaintiff did not file the requisite administrative tort claim with the appropriate federal agency before filing suit. Hooton Decl., docket no. 4, Ex. B; 28 U.S.C. §§ 2675(a), 2401(b). No suit may be instituted against the United States unless and until the agency has finally

1 denied the claim by mailing a denial letter or six (6) months has elapsed from the filing of
2 the claim and the agency has taken no action. 28 U.S.C. § 2675(a). This pre-requisite to suit
3 is jurisdictional. Cadwalder v. United States, 45 F.3d 297, 300 (9th Cir. 1995). This Court
4 does not have jurisdiction to the extent that the Plaintiff's claim may be construed as a claim
5 for damages arising out of a wrongful or negligent act or omission of Madelyn Bushnell
6 under a theory of common law tort. As the Plaintiff claims in his complaint, docket no. 1,
7 that Ms. Bushnell negligently harmed the Plaintiff by revealing a secret about him, in
8 essence a common law tort, this Court lacks subject matter jurisdiction.

9 The Court hereby DISMISSES Plaintiff's claim without prejudice.

10 IT IS SO ORDERED.

11 DATED this 2nd day of May, 2005.

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14 Thomas S. Zilly
15 United States District Judge
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